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FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER

MICHALSKI, SEAN M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VINCENT P. WALKER, COREY E. CORBEIL and STEPHEN
RAWLE

Appeal 2009-005225
Application 10/799,946
Technology Center 3700

Decided: September 17, 2009

Before: WILLIAM F. PATE, III, JENNIFER D. BAHR and
FRED A. SILVERBERG, *Administrative Patent Judges*.

PATE, III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1-24, 28-30, 35-43 and 81-91. App. Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

The claims are directed to a shaving blade unit. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A shaving blade unit comprising:

a housing having a front edge, a rear edge and side edges extending between the front and rear edges, the housing defining an aperture between the front and rear edges;

one or more shaving blades between the front edge and the rear edge, the one or more blades having cutting edges arranged to define a cutting region;

a clip arranged to retain the one or more shaving blades on the housing, the clip having a leg received by the aperture, the leg having a bent portion defining a curvature to secure the clip to the housing; and

a trimming blade assembly, comprising a blade carrier and a trimming blade, retained on the housing by the clip, wherein the leg of the clip extends through an opening defined by the trimming blade assembly securing the trimming blade assembly to the housing relative to the shaving blades, such that when the trimming blade is in contact with a user's skin the cutting edges of the one or more shaving blades are disposed on a surface facing away from a surface contacting the user's skin.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Anderson	US 5,761,814	Jun. 9, 1998
Brown	US 6,185,823 B1	Feb. 13, 2001
Rozenkranc	US 6,276,061 B1	Aug. 21, 2001

Magrab, Edward, *Integrated Product and Process Design and Development*, CRC press LLC, 143 (1997) (hereinafter “Magrab”).

Parmley, R.O., *Illustrated Sourcebook of Mechanical Components*, McGraw-Hill, 14-8, 14-9 and 20-22 through 20-26 (2000) (hereinafter “Parmley”). Online version available at:
<http://www.knovel.com/knovel12/Toc.jsp?bookID=323&VerticalID=0>.

Claims 1, 2, 4, 6, 9, 10, 11, 15, 28, 81-84, and 86 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown, Rozenkranc, and Magrab. Ans. 4.

Claims 1-3, 5, 7, 8, and 12 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown, Rozenkranc, Magrab and Anderson. Ans. 12.

Claims 13, 14, 16-21, 30, 33- 43, 85, and 87-91 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brown, Rozenkranc, Magrab, Anderson and Parmley. Ans. 15.

Claims 22, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Rozenkranc, Anderson, and Parmley, and further in view of Rozenkranc. Ans. 24.

ANALYSIS

Each of the appealed claims requires a “trimming blade.” The Examiner contends that the sole rearward facing blade of Brown (Fig. 14; col. 4, ll. 35-39) constitutes a trimming blade, and concludes that it would have been obvious to incorporate Rozenkranc’s teachings regarding trimming blades 4 into the device of Brown. Ans. 6-7. Appellants contend

that it is unreasonable to interpret Brown's rearward facing blade as the claimed "trimming blade." App. Br. 6-7; Reply Br. 1-3. The Examiner counters that "[A]ppellant has provided no distinction between the functions of a primary and a trimming blade within the context of the claims" and in any case, Rozenkranc "undoubtedly shows a trimming blade." Ans. 27.

"[T]he PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

The Specification provides:

One or more shaving blades are located between the front and rear edges and have cutting edges to define a first cutting region. A trimming blade having a cutting edge is connected to the housing to define a second cutting region that is spaced from the first cutting region.

Spec. 2:6-9.

Reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim. *In re Prater*, 415 F.2d 1393, 1404-05, (CCPA 1969). The Specification makes clear that the term "trimming blade" is used to refer to a blade that is distinguished from the "shaving blades" by being spaced from the shaving blades, not by simply having a different orientation. We infer from the specification that a so-called trimming blade must be

spaced far enough from the shaving blade or blades so that the trimming function can be accomplished without the engagement of the shaving blades on the trimmed surface. The blade of Brown relied upon is not spaced far enough from the shaving blade(s) to accomplish a trimming function, and, indeed, Brown discloses it as, in actuality, another shaving blade. Thus, we cannot agree with the Examiner that Brown's rearward facing blade is the claimed "trimming blade."

The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. The key to supporting any prima facie conclusion of obviousness under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Court in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) noted that the analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), cited with approval in *KSR*, 550 U.S. at 418.

The Examiner concluded that it would have been obvious to incorporate Rozenkranc's teachings regarding trimming blades into the device of Brown by reorienting Brown's trimming blade in the manner taught by Rozenkranc to thereby add an additional level of marketability to the razor. Ans. 6-7. This conclusion, however, is premised upon the erroneous finding that Brown includes a trimming blade. Brown is primarily concerned with optimizing the shape of the razor blade unit to conform to

the axilla. Brown, cols. 1-3. Absent reliance upon Appellants' claim language as a template, one of ordinary skill in the art would not have recognized Brown's teachings as related to trimming blades or that Brown and Rozenkranc were combinable in the manner suggested by the Examiner. Thus, we must conclude that the Examiner's proposed reason for incorporating Rozenkranc's teachings regarding trimming blades into the device of Brown was based upon knowledge gleaned only from Appellants' disclosure. It is improper to base a conclusion of obviousness upon facts gleaned only through hindsight. To draw on hindsight knowledge of the patented invention, when the prior art does not contain or suggest that knowledge, is to use the invention as a template for its own reconstruction—an illogical and inappropriate process by which to determine patentability. *Sensonics Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570 (Fed. Cir. 1996) (citing *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983)). The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made. *Id* (citing *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138 (Fed. Cir. 1985)). Thus, the fact that Rozenkranc discloses a trimming blade does not cure the deficiency in the Examiner's conclusion of obviousness. Magrab, Anderson and Parmley, as applied by the Examiner, also fail to cure this deficiency.

CONCLUSION OF LAW

On the record before us, Appellants have established that the Examiner erred by finding that Brown's rearward facing blade is the claimed "trimming blade," and by concluding that it would have been obvious to

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incorporate Rozenkranc's teachings into the device of Brown by reorienting Brown's trimming blade in the manner taught by Rozenkranc.

DECISION

For the above reasons, the Examiner's rejections of claims 1-24, 28-30, 35-43 and 81-91 are reversed.

REVERSED

mls

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022